

To: Lamoine Board of Appeals
From: John Holt, Chair, Lamoine Planning Board
Date: 11/5/2014
Re: Benincasa appeal – supplemental comments

As chair of the Planning Board and on its behalf, on October 27, I submitted a statement for your consideration which made two basic points:

- Any question as to the validity or legality of a provision of the BLUO is a matter for the courts and not for the Appeals Board. It is my understanding that Mr. Bearor has raised the issue of the Planning Board's authority to grant a waiver regarding the number of permissible curb cuts so as to legally enable him to raise the issue later if the matter is brought before the courts. It is not a relevant discussion for the Appeals Board as the Appeals Board has no authority to decide on the legality of an ordinance provision.
- For the record, the Planning Board did not issue any permits but simply granted a waiver to enable Mr. Balach to seek a permit from the Road Commissioner. Road Commissioner Stuart Marckoon made the determination that a road entrance permit was permissible.

As Chair of the Planning Board, I wish to add a further point in light of the voluminous testimony submitted by residents. A distinction must be noted between the terms "dwelling unit" and "accessory dwelling unit." As used in the Building and Land Use Ordinance, an "accessory dwelling unit" is defined as one which is constructed WITHIN, and incidental to, an existing or new single family dwelling. (Think a mother-in-law apartment within an existing home). A Recreational Vehicle, since it is physically separate from and not within a house, is not to be considered an "accessory dwelling unit" as the ordinance uses the term. Thus, the many provisions of Section 10 D – Accessory Dwelling Units do not apply to the matter under appeal.

However, if an RV is considered as a 'dwelling unit' then it is subject to the provisions of the ordinance with respect to dwelling units. Among other things, the ordinance requires, as per Section 4.I. Lot Standards, that minimum lot size "per dwelling unit" is 40,000 square feet. Two dwelling units presumably would require a lot size of 80,000 square feet. A construction permit is also required.

Obviously, the significant question for the Appeals Board to discuss and decide is "Under what conditions is a Recreational Vehicle to be considered not just an RV but also a "dwelling unit?"